

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

RALPH RAY TENNANT, JR.,

Plaintiff,

v.

**Civil action no. 5:11cv49
(Judge Stamp)**

**JIM RUBENSTEIN,
WILLIAM M. FOX,
TONY LEMASTERS
and KAREN TOWNSEND,**

Defendants.

SUPPLEMENTAL REPORT AND RECOMMENDATION

On July 20, 2011, the undersigned issued an Opinion/ Report and Recommendation in this matter, recommending that the plaintiff's complaint be dismissed as frivolous. Simultaneously with the entry of that Opinion/Report and Recommendation, the plaintiff filed a document entitled "Amended Relief Requested," which was docketed as a Motion. The sole purpose of this Supplemental Report and Recommendation is to address that Motion.

Federal Rule of Civil Procedure 15(a) provides that "a party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served... Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires." In this instance, no responsive pleading had been served, and therefore, the plaintiff's Motion to Amend should be granted as a matter of course.

In his amendment, the plaintiff does not name any additional defendants nor does he state

any additional grounds for relief.¹ Rather, he seeks only to add the following to his prayer for relief: (1) costs and fees to be paid by the defendants; (2) an award of \$56 per month for every month following February 2011, until this matter is concluded; (3) an award of nominal damages of \$20,000 from each of the named defendants; (4) an award of punitive damages in the amount of \$250,000 from each of the named defendants; and (5) any other relief that the Court deems fair.

As previously, noted, the undersigned issued an Opinion/Report and Recommendation that the plaintiff's complaint be denied as frivolous. Because the plaintiff does not seek to add any additional defendants or claims, it is hereby **RECOMMENDED** that the plaintiff's motion for amended relief (Doc. 21) be **DENIED**.

Within fourteen (14) days after being served with a copy of this recommendation, any party may file with the Clerk of the Court written objections identifying the portions of the recommendation to which objections are made, and the basis for such objections. A copy of such objections should also be submitted to the Honorable Frederick P. Stamp, United States District Judge. Failure to timely file objections to this recommendation will result in waiver of the right to appeal from a judgment of this Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); Thomas v. Arn, 474 U.S. 140 (1985).

The Clerk of the Court is directed to provide a copy of this Report and Recommendation to the *pro se* plaintiff by certified mail, return receipt requested, to his last known address as reflected

¹The plaintiff's complaint, which was filed on March 3, 2011 alleged that he was unfairly discharged from his position in the prison library. He plaintiff further alleges that unlike tow other inmate who were discharged at the same time, he was not reinstated to his position. He therefore alleged that he was discriminated against in violation of his right to equal protection.

on the docket sheet.

Dated: 1 August 2011

John S. Kaull

JOHN S. KAULL

UNITED STATES MAGISTRATE JUDGE